

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)	
relation of State Engineer,)	
)	
Plaintiff,)	
)	69cv07941-BB
-v-)	
)	RIO CHAMA STREAM SYSTEM
ROMAN ARAGON et al.,)	
)	Section 5, Rio Gallina
Defendants.)	
_____)	

SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE RIO GALLINA SECTION OF THE RIO CHAMA STREAM SYSTEM

Following discussion by counsel for the State of New Mexico, *ex rel.* State Engineer, and the Gallina-Capulín Acequia Association at the July 23, 2007, working session, and being fully informed in the premises, the Special Master enters this Order pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Rio Gallina Section of the Rio Chama Stream System (Section 5) and outline further proceedings as follows:

I. PRIORITY DATES

A. The March 15, 2000, Procedural Order for the Adjudication of Water Rights Claims in the Rio Gallina Section of the Rio Chama Stream System (Docket No. 5890), as amended, provides that the adjudication of priority dates and irrigation water requirements will be initiated by the State of New Mexico, *ex rel.* State Engineer, following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in Section 5 for surface water irrigation use is now complete with the exception of the determination of priority dates and irrigation water requirements. The Court has also completed its errors and omission process with respect to individual subfiles in Section 5.

B. The State of New Mexico and the following acequias or community ditches in Section 5 have entered into a stipulation and settlement agreement with regard to ditch-wide priority dates as described below:

Vigiles Ditch	1876
Rincon Ditch	1876
Placitas Ditch	1876
Sanchez–Maestas Ditch	1876
Cordova–Martinez Ditch	1878
Gonzales–Gurule Ditch	1878
Cecilia Ditch	1878
Valdez Ditch	1878

See Stipulation on Priority Dates in Section 5, filed February 10, 2005 (Doc. No. 7767).

Each of the Acequias listed above has stipulated to its own priority date and to the priority dates for the other Acequias listed.

C. The adjudication of water right priorities for community and private ditches in Section 5 shall be completed in a show cause proceeding similar to the process used in the determination of priority dates in Section 1. *See* Order dated October 3, 1994 (No. 3521).¹

II. IRRIGATION WATER REQUIREMENTS

The State of New Mexico and the Acequias or Community Ditches in Section 5 listed in Paragraph 2 above have reached an agreement on irrigation water requirements in Section 5, and they have entered into a stipulation and settlement agreement with regard to those requirements as

¹ There is a single private ditch in Section 5, the Emilio Jacquez Ditch. *See* Consent Order filed September 29, 2004 (No. 7609) (Henry L. Jacquez).

described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.38 acre-feet per acre per annum.
- b. The farm delivery requirement (FDR) is 3.46 acre-feet per acre per annum.
- c. The project diversion requirement (PDR) is 5.77 acre-feet per acre per annum for irrigation.

See Stipulation and Settlement Agreement on Irrigation Water Requirements in Section 5 filed July 3, 2007 (No. 8727).

The irrigation water requirements in Section 5 set forth in the stipulation and settlement agreement described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

III. ORDER TO SHOW CAUSE

A. By August 31, 2007, the State of New Mexico shall file a Motion For Approval of Form of Notice and Order to Show Cause with respect to the priority date and irrigation water requirement proposals that the State intends to serve on individual subfile defendants in Section 5. With the Court's approval of the proposed form of notice, the Notice and Order to Show Cause will be served by mail on all individual subfile defendants in Section 5. The form of notice will inform the defendants that the Court has entered an Order that requires them to show cause why their water right(s) should not be determined by:

1. the priority date proposed by the State for each defendant's own water right and ditch and/or the priority dates proposed by the State for any other community or private ditch in Section

5; and/or

2. the irrigation water requirements proposed by the State for all surface water irrigation use.

The defendants will also be informed:

1. of the process for filing objections;

2. that they will have no other opportunity to protest either priority date determinations of the ditches in Section 5 or the irrigation water requirements; and

3. that subsequent *inter se* proceedings in Section 5 will not include the opportunity to object to those determinations.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to any person not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

B. The State shall also prepare, with the Court's approval:

1. a proposed Notice and Order to Show Cause in connection with the priority dates of private ditches in Section 5 to be served on the Commissioners of each Community Ditch in Section 5;

2. a proposed Notice and Order to Show Cause in connection with the priority dates of all ditches in Section 5 and irrigation water requirements for Section 5, to be served on the United States of America.

3. a proposed Notice for publication to inform defendants and all persons having water rights in Section 5 of their right to participate and offer evidence in support of objections to the proposed

determination of priority dates for ditches in Section 5 and proposed irrigation water requirements for Section 5. The approved Notice shall be published once a week for four consecutive weeks in the Rio Grande Sun, a newspaper of general circulation in the Section 5 area.

IV. SCHEDULING AND PRETRIAL CONFERENCE

After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the Special Master will set a scheduling and pretrial conference for further proceedings, at a time and place to be announced, to determine the dates for initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1), a conference of parties pursuant to Fed.R.Civ.P. 26(f), and a pretrial conference pursuant to Fed. R. Civ. P. 16. Following the resolution of all objections, the State and interested parties will meet with the Court to discuss potential *inter se* proceedings in Section 5.

In the absence of objections to the priority dates and irrigation water requirements proposed by the State, the Court may enter a final order (or orders) with respect to priority dates of all ditches in Section 5 and to the irrigation water requirements for Section 5.

IT IS SO ORDERED.

Vickie L. Gabin

SPECIAL MASTER